

Cite as 2011 Ark. App. 464

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR10-542

OTIS WADE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 29, 2011APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR2008-1037]HONORABLE CHARLES DAVID
BURNETT, JUDGE

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

This case is once more before us after we ordered rebriefing on January 19, 2011. In that opinion, we denied the motion to withdraw filed by Wade's appellate counsel and ordered an issue raised in Wade's pro se points to be briefed in adversarial form. That issue was whether Wade had received an illegal sentence when he received probation for a Class Y felony. We hold that Wade did receive an illegal sentence, and we reverse and remand to the trial court for further proceedings consistent with this opinion.

The issue of whether the appellant received an illegal sentence goes to subject-matter jurisdiction, and we may review the issue whether or not an objection was made in the circuit court. *Richie v. State*, 2009 Ark. App. 522, ___ S.W.3d ___. A sentence is void or illegal when the court lacks authority to impose it. *Id.*

According to a judgment and disposition order filed November 25, 2008, Wade pleaded

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guilty to simultaneous possession of drugs and a firearm, a Class Y felony. The trial court placed him on probation for sixty months. The State later filed a petition to revoke Wade's probation on March 20, 2009. After a hearing on February 18, 2010, Wade's probation was revoked, and he was sentenced to 300 months' imprisonment in the Arkansas Department of Correction.

In the version of the brief before us,¹ Wade's appellate counsel essentially echoes the assertion made in Wade's aforementioned pro se points, that because probation was not authorized for a Class Y felony, the trial court erred in revoking his probation without correcting the original sentence. He asserts that his appeal should be dismissed. The State agrees that probation was not authorized for a Class Y felony. The State, however, urges us to remand this case to the trial court for resentencing.

Because probation was not authorized for Wade's underlying offense, that sentence was void. Accordingly, the subsequent revocation proceeding was also void. We therefore reverse and dismiss Wade's revocation and remand this case to the trial court. We note that the original judgment and commitment order reflects that Wade received probation pursuant to a negotiated plea. In remanding this case to the trial court, where Wade must be given a sentence within the range authorized by statute, we do not intend to foreclose the trial court from allowing Wade to withdraw his guilty plea.

Reversed and remanded.

VAUGHT, C.J., and GLOVER, J., agree.

¹We note that Wade's appellate counsel has chosen to retain the portion of his brief that attempted to comply with the *Anders* format. We believe this is a mere oversight in that this material is inconsistent with our order to brief the illegal-sentence issue.